

ALANA ROBINSON  
Acting United States Attorney  
VALERIE H. CHU  
California Bar No. 241709  
Assistant U.S. Attorney  
Federal Office Building  
880 Front Street, Room 6293  
San Diego, CA 92101-8893  
Tel.: (619) 546-6750  
Email: Valerie.chu@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA	) No. 16CR1409-H
	)
v.	) JOINT MOTION TO (1) CONTINUE
	) MOTION HEARING AND (2) EXCLUDE
	) TIME UNDER THE SPEEDY TRIAL ACT
	)
HOOTAN MELAMED (1),	)
JOHN PANGELINAN (3),	) Date: January 23, 2017
PHONG H,UNG TRAN (4),	) Time: 2:00 p.m.
JONATHAN PENA (5),	)
	)
Defendants.	)
	)
	)
	)

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The captioned parties jointly move to continue the motion hearing currently set for January 23, 2017 at 2:00 p.m. to May 22, 2017 at 2:00 p.m., and to exclude time under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties submit as follows:

1. On June 16, 2016, a federal grand jury returned a 14-count indictment charging the defendants with conspiracy, honest services mail fraud, violations of the Travel Act, and criminal forfeiture, in connection with an alleged \$34 million kickback and bribery scheme through which service providers paid bribes and kickbacks to doctors to write prescriptions for compound creams or make referrals for durable

1 medical equipment, and then to submit them to specific pharmacies and  
2 companies to be filled.

3       2. The defendants made their initial appearances and were  
4 arraigned on the indictment in the Southern District of California on  
5 June 28, 2016. The Speedy Trial Act, 18 U.S.C. § 3161(c)(1), requires  
6 trial to commence within 70 days from that date. Section 3161(h)  
7 excludes certain periods of time in calculating the 70 days, including  
8 delay resulting from a continuance if the court finds "the ends of  
9 justice served by taking such action outweigh the best interest of the  
10 public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A).  
11 The court must "set[] forth . . . either orally or in writing, its  
12 reasons" for the finding. Id. The court "shall consider" the following  
13 factors, "among others":

14       (i) Whether the failure to grant such a continuance in the  
15 proceeding would be likely to make a continuation of such  
16 proceeding impossible, or result in a miscarriage of  
justice.

17       (ii) Whether the case is so unusual or so complex, due to  
18 the number of defendants, the nature of the prosecution, or  
19 the existence of novel questions of fact or law, that it is  
unreasonable to expect adequate preparation for pretrial  
proceedings or for the trial itself within the time limits  
established by this section.

20       . . . .

21       (iv) Whether the failure to grant such a continuance in a  
22 case which, taken as a whole, is not so unusual or so  
23 complex as to fall within clause (ii), would deny the  
24 defendant reasonable time to obtain counsel, would  
unreasonably deny the defendant or the Government  
continuity of counsel, or would deny counsel for the  
defendant or the attorney for the Government the reasonable  
time necessary for effective preparation, taking into  
account the existence of due diligence.

25 U.S.C. § 3161(h)(7)(B). "No continuance under [this provision] shall be  
26 granted because of general congestion of the court's calendar, or lack  
27  
28

1 of diligent preparation or failure to obtain available witnesses on the  
2 part of the attorney for the Government." U.S.C. § 3161(h)(7)(C).

3 3. The parties agree that the ends of justice served by granting  
4 the requested continuance outweigh the best interest of the public and  
5 the defendants in a speedy trial, for the following reasons:

6 a. According to the indictment, the alleged scheme involved  
7 years' worth of medical treatments, millions of dollars in bills,  
8 thousands of dollars in corrupt payments, and hundreds of patients.

9 b. Because the claims involve patient identities, medical  
10 treatment, and billing records, the discovery in this case is  
11 sensitive. The Court issued a protective order on July 18, 2016.

12 c. The discovery consists of thousands of pages of bank  
13 records, agent reports, and subpoenaed documents, as well as  
14 hundreds of audio recordings ranging in duration from a few minutes  
15 to over an hour.

16 d. Given the volume of discovery and the need to protect  
17 and limit its disclosure, the defense needs time to review the  
18 material before they can file and litigate pretrial motions and  
19 provide an estimate of trial length.

20 4. Accordingly, the parties request a continuance of the motion  
21 hearing until May 22, 2017.

22 5. The parties have exercised due diligence. The parties submit  
23 that the amount of discovery and the nature of the charges make it  
24 unreasonable to expect adequate preparation for pretrial proceedings or  
25 the trial itself within the time limits established by the Speedy Trial  
26 Act. The parties further submit that the failure to grant the requested  
27  
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1 continuance would deny counsel the reasonable time necessary for  
2 effective preparation and result in a miscarriage of justice.

3 6. Defendants are all currently out of custody.

4 7. Counsel for defendants represent that they have discussed the  
5 need for this continuance with their respective clients, and that each  
6 defendant agrees to and joins in the request for this continuance.

7 8. The parties therefore jointly move for a continuance and to  
8 exclude time under the Speedy Trial Act. The parties agree the period  
9 of delay excluded spans from the filing of this joint motion until the  
10 new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and  
11 (h)(7)(A); specifically, that the time between January 23, 2017 and May  
12 22, 2017 shall be excluded.

13 **SO STIPLUATED AND AGREED.**

14 DATED: January 19, 2017 ALANA ROBINSON

Acting United States Attorney

s/ Valerie H. Chu

VALERIE H. CHU

Assistant United States Attorney

s/Steven Goldsobel (w/authorization)

STEVEN GOLDSOBEL

Counsel for Hootan Melamed (Def 1)

s/Patrick Q. Hall (w/authorization)

PATRICK Q. HALL

Counsel for John Pangelinan(Def 3)

s/Thomas Warwick (w/authorization)

THOMAS WARWICK

Counsel for Phong Tran (Def 4)

s/Gretchen von Helms (w/authorization)

GRETCHEN VON HELMS

Counsel for Jonathan Pena (Def 5)

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5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA

7 UNITED STATES OF AMERICA ) No. 16cr1409-H  
8 )  
9 Plaintiff, ) CERTIFICATE OF SERVICE  
10 )  
11 v. )  
12 )  
13 HOOTAN MELAMED (1), )  
14 JOHN PANGELINAN (3), )  
15 PHONG HUNG TRAN (4), )  
16 JONATHAN PENA (5), )  
17 )  
18 Defendants. )  
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IT IS HEREBY CERTIFIED THAT:

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age. My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on the parties to this case by filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2017

s/ Valerie H. Chu  
VALERIE H. CHU